IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 8172 of 2004

Abhinav Dnyan Mandir Society
Karjat, Dist.Raigad .. Petitioner

versus

The State of Maharashtra & ors... Respondents

...

Mr.A.M. Joshi for the petitioner.
Mr.Y.D. Mulani, AGP for the respondent nos.1 and 2.

CORAM : D.G. KARNIK, J

DATED : 16th February 2006.

P.C.:

1. This Writ Petition is directed against the order dated 26th February 2001 passed by the School Tribunal, Pune. The appellant Society runs four schools and we are concerned in this petition with one of them viz. Abhinav Jnyan Mandir situate at karzat.

Each of the four schools have a sanctioned post of a head master. However, only one school i.e. Abhinav Jnyan Mandir has a sanctioned post of an Assistant Head Master and other three school do not have a post of Asstt. Head Master.

2. The post of an Assistant Had Master fell vacant which was filled up by the petitioner by appointing respondent no.4 as an Assistant Head Master. Though the respondent no.3 was senior to respondent no.4 his claim was not considered on the ground that the post was reserved for scheduled tribe considerate and respondent no.4 belonged to the scheduled tribe. The respondent no.3 challenged the order of promotion of respondent no.3 by filing an appeal before the School tribunal. The School Tribunal allowed the appeal holding that the post of Assistant Head Master was a solitary and singular and the reservation does not apply to a solitary post. I find no error in this view of the school tribunal.

3. Learned counsel for the petitioner says that during the pendency of an appeal before the school tribunal. The respondent no.4 was promoted as a Head Master. This was not pointed out to the school

tribunal which resulted into an error in the judgement of the school tribunal. If the petitioner had promoted respondent no.4 to the post of a Head Master it was the duty of the petitioner to bring that fact on record and not of the respondent no.3. The petitioner cannot take advantage of its own wrong. Respondent no.3 had only challenged his supersession by respondent no.4 to the post of the Assistant Head Master. So far as the post of Assistant Head Master is concerned, respondent no.3 is obviously right as it is a solitary post. So far as the posts of Head Master are concerned, different considerations may apply. The school tribunal was right in holding that rejection of claim of the petitioner to the post of Assistant Head Master on the ground that the post was reserved for a scheduled tribe is obviously a correct decision.

4. Hence, petition is rejected.

(D.G. KARNIK, J)